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June 27, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket 95-116 and DA 97-916, Telephone Number Portability

Dear Mr. Caton:

Bell Atlantic and NYNEX are writing to update the record in this proceeding in connection with the Commission's consideration of the report of the North American Numbering Council concerning the implementation of number portability.

In our original comments, we showed that it would be inconsistent with the Commission's *Number Portability Order* and with section 251(e)(1) of the Act for the Commission to give various regional limited liability corporations oversight and control over the local number portability administrators. We also described the difficulties Bell Atlantic was having with the Mid-Atlantic LLC — in particular, that the LLC had barred Bell Atlantic from participating in the negotiations with Lockheed Martin and had told Bell Atlantic that Bell Atlantic would be required to sign whatever contract the LLC negotiated for Bell Atlantic.¹

As also indicated in our comments, Bell Atlantic took this matter to the Maryland Public Service Commission, in part because the LLC's exclusion of Bell Atlantic jeopardized Bell Atlantic's compliance with that commission's own number portability implementation schedule. This week, the Maryland Commission addressed this issue. It rejected requests that Bell Atlantic be required to join the LLC, and it ordered the LLC to "immediately furnish a copy of the proposed standard User Agreement to" Bell Atlantic, to allow Bell Atlantic to offer changes to that Agreement and to negotiate those terms with Bell Atlantic.² While the right result ultimately was reached, the LLC's intransigence delayed Bell Atlantic's participation for several months and could be overcome only by commission action.

¹ Comments of Bell Atlantic and NYNEX, *Telephone Number Portability*, CC Dkt. 95-116, dated June 2, 1997, at 1-5.

² *The Commission's Investigation into Long Term Number Portability in Maryland*, Case No. 8704, Order No. 73572, dated June 24, 1997 at 7-8, a copy of which is attached.

We believe that scenes like this one will be repeated throughout the country if the Commission gives the LLCs control of the LNPAs — disagreements among LLC members and disputes between members and non-members. To ensure that the LNPAs are managed in a competitively neutral manner, we again urge the Commission to utilize the alternatives suggested in our comments, adopting regulations to govern the LNPAs, requiring that LNPA services be provided under tariff or giving oversight responsibility to an industry body that operates by consensus.

Sincerely,

Marie Breslin

Attachment

cc: C. Matthey
K. Dixon
S. Teplitz

DPE

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ORDER NO. 73572

IN THE MATTER OF THE COMMISSION'S * BEFORE THE
INVESTIGATION INTO LONG TERM * PUBLIC SERVICE COMMISSION
SOLUTIONS TO NUMBER PORTABILITY * OF MARYLAND
IN MARYLAND. *

*
CASE NO. 8704
*

June 24, 1997

On May 8, 1997, MFS Intelenet of Maryland, Inc. ("MFS-MD"), MCI Metro Access Transmission Services, Inc. ("MCI"), Sprint Communications Company, L.P. ("Sprint"), Teleport Communications Group ("TCG"), and AT&T Communications of Maryland, Inc. ("AT&T") (collectively referred to as the "Carriers") filed a letter with the Commission regarding an issue concerning the development of local number portability ("LNP") in Maryland. In the letter, the Carriers advise the Commission that Bell Atlantic-Maryland, Inc. ("BA-MD") has stated an intention to negotiate its own user agreement with the vendor selected by the Mid-Atlantic Carrier Acquisition Company to provide permanent LNP in the mid-Atlantic region. The Carriers express concern that BA-MD's separate negotiations with the vendor could result in a potentially discriminatory and non-neutral business environment for all carriers that port numbers in Maryland, in violation of federal law and State and federal regulations.¹ As discussed

¹ The Carriers contend that Section 251(e)(2) of the Telecommunications Act of 1996 sets forth a mandate of competitive neutrality governing LNP costs. They also contend that a separate agreement would create a "significant barrier" to carriers being able to comply with Commission Order No. 72708, issued in this proceeding on June 24, 1996, and with the Federal Communication Commission's ("FCC") First Report and Order issued in The Matter of Telephone Number Portability, CC Docket No. 95-286, July 2, 1996.

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below, BA-MD contends that its intentions and actions are necessary and proper.

Additionally, on May 9, 1997, BA-MD requested approval of dates for implementing permanent LNP in the Baltimore and Washington local access and transport areas ("LATAs"). BA-MD submits that the Commission should modify the implementation dates set forth in Order No. 72708 in recognition of recent developments. MCI opposes the requested LNP implementation schedule.

The Commission resolves both of these matters in this Order. The Commission expects LNP implementation to proceed smoothly in accordance with the directives and guidance contained herein. The discussion begins with the vendor negotiation issues raised by the Carriers.

VENDOR NEGOTIATION ISSUES

In Order No. 72708, the Commission adopted the local routing number ("LRN") method of providing permanent LNP for Maryland. The Commission also affirmed the issuance of a request for proposals ("RFP") for an LNP vendor by Maryland's LNP Consortium,² and directed LRN LNP implementation in Maryland's two largest LATAs by no later than the third quarter of 1997. Additionally, the Commission acknowledged the intention of most

² The Consortium is a group of persons and companies interested in permanent LNP in Maryland. The Commission's Technical Staff convened the Consortium in compliance with the Commission's Order No. 72060, issued in this proceeding on June 29, 1995.

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members of the Consortium to form a limited liability corporation ("LLC") to further permanent LNP in Maryland.

Subsequent to the issuance of Order No. 72708, most members of the Consortium formed an LLC, the Mid-Atlantic Carrier Acquisition Company ("MCAC"), to further LNP goals in Maryland and the mid-Atlantic region. MCAC issued an RFP for LRN LNP, and chose Lockheed Martin IMS ("Lockheed") as the successful bidder. MCAC has initiated negotiations with Lockheed, covering both a Master Contract and a standard User Agreement.

Since BA-MD did not join MCAC, the LLC has not allowed it to participate in negotiations with Lockheed.³ The Carriers state that Bell Atlantic Corporation, BA-MD's parent company, is the only major local exchange company in the United States to refuse to join a regional LLC. They note that the Mid-West regional LLC negotiated a Master Contract with Lockheed containing a User Agreement with identical terms, conditions and prices for all users, including incumbent local exchange carriers ("ILECs"). They observe that the FCC has ordered database vendors to be competitively-neutral third parties, and contend that Lockheed could not be neutral to all users if it provides different treatment or prices to a particular carrier. Finally, the Carriers point out that the RFP and Master Contract it is negotiating with Lockheed contain provisions prohibiting the vendor from negotiating different terms, conditions and prices with an individual party and from offering a competing service in the service area. Based on those considerations, the Carriers

³ MCAC did allow BA-MD to participate in the drafting of the RFP.

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ask the Commission to direct all Maryland carriers that port numbers to do so based on the standard User Agreement designed by the industry representatives.

In comments filed on May 13, 1997, the Commission's Staff recommends that the Commission "indicate a strong preference that Bell Atlantic become a full partner in the LNP transition process and join the ... MCAC." Staff recommends that the Commission order Bell Atlantic to join MCAC if it does not do so upon the Commission's encouragement.

In a response filed on May 20, 1997, BA-MD reiterates previous statements that it did not join MCAC because it is concerned that, as an ILEC, it could be outvoted by competing local exchange company ("CLEC") members of MCAC on key issues. BA-MD states that MCAC precluded BA-MD from participating in MCAC's negotiations with Lockheed. BA-MD also asserts that the Carriers have not presented evidence showing that direct negotiations by BA-MD will result in costs being borne on an other than competitively-neutral basis. Finally, BA-MD emphasizes that it is willing and able to negotiate with the vendor, either separately or in cooperation with MCAC.

The Commission heard the Carriers' request at the May 21, 1997 Administrative Meeting. The parties provided comments and answered questions concerning their positions. Additionally, in letters dated May 27, 1997, the Office of People's Counsel ("OPC"), Lockheed, BA-MD, and MCAC provided responses to the Commission's questions regarding the effect on MCAC of allowing BA-MD to join MCAC's negotiations with Lockheed

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without first becoming a member of MCAC, and on the Pennsylvania Public Utility Commission's ("PUC") May 8, 1997 order concerning regional implementation of permanent LNP.

OPC asks the Commission to direct BA-MD to participate in the negotiations and work with MCAC, just as the Pennsylvania PUC directed Pennsylvania LECs to do so. OPC further asks the Commission to direct BA-MD to proffer the changes, if any, that BA-MD will seek from the terms and conditions negotiated by MCAC and Lockheed.

Lockheed intends to remain impartial in all dealings with users of its LNP services. Therefore, it takes no position on whether the Commission should direct BA-MD to join MCAC. Lockheed also prefers to conclude contract negotiations with MCAC and sign a Master Contract, which would include a standard User Agreement guaranteeing all users equal treatment and identical terms.

BA-MD asserts that its participation in the negotiations will give Lockheed assurance that the terms of the contract are competitively neutral, and thus will lessen the risk of liability faced by MCAC and Lockheed. BA-MD points to the fact that MCAC is an LLC, a special form of corporate entity possessing broad liability protections.

BA-MD also states that the Pennsylvania PUC allows LECs to negotiate contracts with the vendor outside of MCAC's efforts. It concludes by asking the Commission to direct MCAC to allow BA-MD to participate in MCAC's activities, including the contract negotiation process.

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MCAC recommends that the Commission encourage, or order, if necessary, BA-MD to join MCAC. It criticizes BA-MD for noting its interest in separate negotiations on the User Agreement more than 13 months after the Consortium agreed to the format, and just days before an extensive, five-month-long Master Contract negotiation was to be completed.

MCAC states that it could be jointly and severally liable for any claim against BA "arising from BA's impact upon the negotiations or upon any other aspect of the Master Contract." MCAC is concerned that MCAC could be held liable if BA did not pay a judgment against it for an action related to the Master Contract, and that MCAC's insurance would not cover intentional misconduct by BA.

MCAC said that the Pennsylvania PUC LNP order allows non-MCAC member ILECs to "participate" in MCAC's efforts, a direction that does not extend to participation in direct contract negotiation. It also contends that the Pennsylvania order's provisions allowing carrier agreements with the vendor outside of MCAC's auspices applies to small and rural LECs. MCAC wonders how resolutions would be attained if BA took one negotiating position and MCAC another.

Finally, MCAC offers to provide BA a copy of the draft standard User Agreement, subject to two conditions. It wants BA to sign an appropriate non-disclosure agreement, and it wants Lockheed to agree to the release.

In a June 6, 1997 letter, BA-MD disputes many of MCAC's assertions. BA-MD also states that MCAC's offer to provide a

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draft of the "... standard User Agreement ... is a step in the right direction." BA-MD states that it will review the draft and assess whether additional negotiations regarding contractual terms are necessary.

The Commission sees no compelling reason for ordering BA-MD to join MCAC, and declines to do so. The Commission also perceives valid reasons for having one Master Contract establishing the vendor as the provider of services to all carriers, including BA-MD, pursuant to pricing, performance and accountability provisions. The Commission also believes it appropriate to develop a single standard User Agreement applicable to all carriers, including BA-MD, that incorporates the Master Contract's pricing terms and allows a carrier or other entity to use the vendor's services, while allowing for competitively-neutral variations to accommodate engineering or technical modifications necessary for particular network configurations.

The Commission is disappointed that the parties brought these matters to the Commission's attention at this late date, so close to permanent number portability implementation in Maryland. It is, however, pleased that MCAC will satisfy BA-MD's request for a copy of the standard User Agreement. To ensure that contract negotiations are completed to allow for the implementation of permanent number portability in Maryland within the timeframe contained in this Order, the Commission directs the regulated members of MCAC to secure a release from Lockheed and immediately furnish a copy of the proposed standard User Agreement to BA-MD, provided BA-MD signs an appropriate non-disclosure form. After

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reviewing the proposed standard User Agreement, BA-MD shall let MCAC know if it believes changes to the Agreement are necessary. If so, MCAC and BA-MD shall engage in good faith discussions to devise terms satisfactory to both parties.

In order to ensure that negotiations between MCAC and BA-MD are serious and prompt, the Commission directs BA-MD to notify the Commission of any disagreements it may have with the standard User Agreement by Tuesday, July 15, 1997. This filing shall serve to focus attention on issues requiring resolution, and signal the Commission as to possible areas of disagreement between the parties. To the extent there are areas of disagreement as of July 15, 1997, the Commission directs MCAC and BA-MD to return to the negotiating table for intensive good faith discussions. Then, by Wednesday, July 23, 1997, MCAC shall file with the Commission a completed Master Contract, and a model standard User Agreement agreed to by BA-MD. If the parties cannot agree on the terms of the standard User Agreement, on or before July 23, 1997 MCAC shall file a completed Master Contract and a model standard User Agreement, and BA-MD shall file a statement of the difficulties it has with the model standard User Agreement. The Commission then will resolve the parties' differences for them after first hearing argument at the Wednesday, July 30, 1997 Administrative Meeting.

With no citation to the law, BA-MD indicates that the Commission may lack the authority to direct BA-MD to enter into a contract negotiated by MCAC and Lockheed. In the absence of considered legal argument from BA-MD, the Commission points

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at this time to the provisions contained in Md. Ann. Code art. 78, §§ 1 and 56, as its authority to direct a regulated public service company to take actions deemed necessary by the Commission to ensure that the public interest in having a viable permanent number portability system in place is satisfied.

IMPLEMENTATION TIMETABLE

As mentioned above, Order No. 72708 directed that implementation of permanent LNP begin no later than the third quarter of 1997. BA-MD's proposed schedule begins implementation of permanent LNP in the Gaithersburg office on October 31, 1997. The schedule then shows implementation in the Charles Street (downtown Baltimore) office on December 15, 1997, and "flash-cut" implementation in the remainder of the Baltimore and Maryland portion of the Washington, D.C., LATAs on February 28, 1998.

BA-MD advises that its proposed schedule is necessary to minimize the potential for system reliability problems arising from permanent LNP implementation. It also notes that implementation would occur in advance of the schedule outlined by the FCC in its order of March 11, 1997.⁴

The Commission's Staff, in comments filed on June 4, 1997, outlines some of reasons why flash-cut implementation is preferable to a more gradual phased approach over the period from October 31 to February 28. Staff describes the increased system reliability risks introduced by a phased porting approach, and

⁴ See *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration.

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the benefits of stressing the entire system that can occur if flash-cut porting is done.

MCI, in comments filed on June 6, 1997, opposes BA-MD's proposed implementation dates. It prefers opening LNP in end offices in a steady stream, rather than on a flash-cut basis. MCI avers that several other Bell Operating companies will implement permanent LNP office-by-office as opposed to a flash cut. MCI is concerned that BA-MD might let the schedule slip past February 28, 1998, which would mean porting delays for all customers in Maryland's two largest LATAs except for those served by the Gaithersburg and Charles Street offices.

MCI also questions the technical reasons advanced by BA-MD in support of the February 28 flash cut. Further, MCI states that until permanent LNP is implemented, CLECs' customers will need interim LNP. MCI avers that CLECs and their customers will be faced with the expenses and drawbacks of interim LNP arrangements, to be followed by a second porting order procedure to initiate permanent LNP. MCI contends this might discourage customers from signing with CLECs until permanent LNP is available.

The Commission is concerned that BA-MD's schedule does not meet the Commission's expectations contained in Order No. 72708. However, the Staff has thoroughly investigated the implementation proposal and found necessary and valid reasons for the delay. After considering the comments of the parties, the Commission authorizes BA-MD to implement permanent LNP according to the schedule contained in its letter of May 9, 1997. The

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Commission recognizes the nature and extent of MCI's concerns, but finds that the network reliability concerns advanced by BA-MD and confirmed by Staff are of a higher priority. The Commission advises BA-MD, however, not to expect additional adjustments to the schedule.

By Direction of the Commission,



Daniel P. Gahagan
Executive Secretary